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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,470	07/01/2003	Dimitri Peter Zafiroglu	SWZ-010	1592

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EXAMINER	
MATZEK, MATTHEW D	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/611,470	ZAFIROGLU, DIMITRI PETER	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-67* is/are pending in the application.

4a) Of the above claim(s) *23-37 and 63-67* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22 and 38-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 July 2003* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/22/04, 1/28/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *IDS: 2/17/04*.

1. Applicant's Amendment and Remarks dated 7/1/2005 have been considered and entered into the Record. Claims 1-22 and 38-62 remain active and claims 23-37 and 63-67 remain withdrawn. The rejections of claims 39, 40, 49 and 50 under U.S.C. 112 second paragraph have been withdrawn due to amendment and clarification. All previous art rejections have been withdrawn due to the amendment of the independent claims 1 and 62 to require the fibrous outer layer to comprise a fabric.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 9, 11, 20, 38-39, 41-42, 51-54, 58-59 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Mitzutani et al. (US 6,803,334).

a. Mizutani et al. teach a composite comprising a fibrous face **12** (fibrous outer layer) disposed on a porous film (Abstract and Fig. 2). The fibrous face may be made of a through-air bonded nonwoven, point bonded nonwoven fabric, a spunlaced nonwoven fabric or a meltblown nonwoven fabric (col. 8, lines 53-58). The fibrous face **12** may be adhered to the porous film **11** via a layer of adhesive (col. 9, lines 46-50). As shown in Fig. 2 the fibrous face has a surface area comprising depressed areas and elevated wherein the depressed areas are

anchored via adhesive. The applied patent teaches the use of a pressure-sensitive adhesive (psa), which is primarily used to bond opposing surfaces, in this instance, not necessitating the impregnation of the fibrous layer. Therefore, it is the Examiner's position that the top surface of the fibrous outer layer is unbonded to the adhesive layer, anticipating claim 9. Claim 20 is rejected as Fig. 2 illustrates that the surface area comprises transition areas disposed between the depressed areas and the elevated areas. Claim 38 is rejected as the applied article comprises a liquid impermeable backing sheet **7** and is vapor permeable (col. 4, lines 24-28). Claim 41 is rejected as adhesive layer is necessarily liquid permeable to allow the absorbent layer **8** successfully function. Claims 51-54 are rejected as Fig. 1 illustrates the composite article with depressed areas that can be observed to possess a number of orientations including a plurality of lines, parallel lines, wavy lines or intersecting parallel lines. The nonwoven fabric is preferred to have a basis weight of 15 to 40 g/m^2 (0.44 to 1.18 oz/yd^2) (col. 9, lines 36-41). Claim 62 is rejected as the article is embossed to give its final orientation (col. 11, lines 5-8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 2-5, 12-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 6,803,334). The applied reference is silent as to the combined density of the fibrous outer layer in the depressed areas and the adhesive layer, the density of the fibrous outer layer and the ratio of the elevation of the elevated area to the thickness of the fibrous layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the article with the instantly claimed combined density of the fibrous outer layer in the depressed areas and the adhesive layer, the density of the fibrous outer layer and the ratio of the elevation of the elevated area to the thickness of the fibrous layer, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. The disclosure of Mitzutani et al. is silent as to the depth at which the fibrous outer layer is embedded in the adhesive layer. It would have been obvious to one of ordinary skill in the art at the time of the invention to have embedded the fibers of the fibrous outer layer through to the top of the fibrous layer. The skilled artisan would have been motivated by the desire to maximize the adhesive bond formed between the adhesive layer and the fibrous outer layer.

5. The disclosure of Mitzutani et al. is silent as to the colors of the fibrous outer layer and the adhesive layer. Claim 22 is rejected as it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the fibrous layer and the adhesive layer of different colors. The skilled artisan would have been motivated by

the desire to make an aesthetically pleasing article and a difference of color would be beneficial during the manufacture of the article to determine the level of impregnation.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 6,803,334). The applied reference is silent as to having the elevated areas positioned on the bottom surface of the fibrous outer layer bonded to the adhesive layer. It would have been obvious to one of ordinary skill in the art at the time of the invention to have bonded the elevated areas positioned on the bottom surface of the fibrous outer layer bonded to the adhesive layer. The skilled artisan would have been motivated by the desire to have had greater stability and mechanical properties of the fibrous outer layer.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Kenmochi et al. (US 6,319,593). The article of Mitzutani et al. is silent as to having a reverse side opposite the fibrous outer layer and the reverse side has an undulating profile.

a. Kenmochi et al. teach an absorbent cleaning sheet comprising a surface layer of filaments placed on the base sheet. The base sheet and the surface layers are bonded to each other at a plurality of bonding lines (Abstract). Figure 2 illustrates a symmetrical absorbent article with an absorbent layer 3 covered by outer layers that allow the article be used on both its top and bottom faces.

b. Since Mitzutani et al. and Kenmochi et al. are from the same field of endeavor (i.e. absorbent articles) the purpose disclosed by Kenmochi et al. would have been recognized in the pertinent art of Mitzutani et al.

c. It would have been obvious at the time the invention was made to person having ordinary skill in the art to modify the article of Mitzutani et al. with the same undulating profile it currently possess on its reverse side motivated by the desire to create a two-faced absorbent article.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 6,803,334). The applied reference is silent as to having the liquid impermeable layer also being impermeable to gas. It would have been obvious to one of ordinary skill in the art at the time of the invention to made the impermeable layer vapor impermeable motivated by the desire to keep the vapors given off from the absorbed exudates from being release from the absorbent article.

9. Claim 43-47 and 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 42 above, and further in view of Tocachek et al. (US 5,310,590). The article of Mitzutani et al. is silent as to having the nonwoven fibrous layer being stitch-bonded.

a. Tocachek et al. teach an absorbent article comprising a stitch-bonded outer layer made of wet or air-laid staple fibers, carded staple fibers, spun-laced fibers or cellulosic pulp fibers (Abstract and col. 2, lines 18-23). Staple fibers are generally less than two inches in length. The absorbent article of may comprise a second absorbent layer of woven or knitted materials (col. 2, lines 41-54).

b. Since Tocachek et al. and Mitzutani et al. are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by Tocachek et al. would have been recognized in the pertinent art of Mitzutani et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have made the article of Mitzutani et al. with stitch-bonded, woven or knitted fabrics motivated by the desire to use a fibrous layer that is not only bonded to the rest of the absorbent composite, but internally bonded to itself yielding improved mechanical properties. Mitzutani et al. teach that composite fabrics may be used as the outer fabric layer (col. 8, lines 53-60).

10. Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Griswold et al. (US 3,081,515). The article of Mitzutani et al. is silent as to using lace as the fibrous outer layer.

a. Griswold et al. teach a nonwoven fabric that resembles a woven or knitted lace layer as illustrated in Figure 1 (col. 1, lines 59-69). The fabric is for use as an absorbent article (col. 2, lines 39-47).

b. Since Griswold et al. and Mitzutani et al. are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by Griswold et al. would have been recognized in the pertinent art of Mitzutani et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of Mitzutani et al. with the motivation of creating a breathable absorbent article. Mitzutani et al. provide for a nonwoven fibrous outer layer composite comprising multiple nonwoven layers (col. 8, lines 55-60). This teaching in conjunction with the combination of

the lace layer of Griswold et al. hereby renders claims 49 and 50 obvious. Applicant provides for nonwoven layers of Mitzutani et al. to be the closed layers in the first page of the remarks dated 7/1/2005 on lines 15-17.

11. Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Chen et al. (US 5,990,377). The article of Mitzutani et al. is silent as to having a plurality of central portions of the depressed areas being removed from the composite.

a. Chen et al. teach a dual-zoned, three-dimensional absorbent web which has been apertured such that the apertured openings overlay the absorbent region of the article (Abstract and Figure 5). As illustrated in Figure 5 not all of the depressed area of the absorbent article is removed. This results in a second pattern of spaced apart depressed areas.

b. Since Chen et al. and Mitzutani et al. are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by Chen et al. would have been recognized in the pertinent art of Mitzutani et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of Mitzutani et al. with apertures with the motivation of providing the absorbent article with an enhanced means by which liquid could more quickly be transported to the absorbent layer.

Double Patenting

12. Claims 1-22 and 38-62 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 and 56-59 of copending Application No. 10/611,769. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite a fibrous face layer with elevated and depressed areas with the depressed areas adhesively attached to the rest of the composite.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

NORCA TORRES
PRIMARY EXAMINER